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unconditionally to surrender must likewise be present. The authority, therefore, is to be supported.

Since the courts consider the probable intention of the parties in these cases, it is difficult to see why the intention, expressed or necessarily implied, should not be examined where the new lease is valid according to the terms. In such cases the English judges say that the tenant is estopped to deny the landlord's power to make the lease, and that therefore a surrender results.[5] But they refuse to find the estoppel where the new lease, though valid, does not convey the exact interest contemplated.[6] That is, the tenant is estopped if the new lease gives him what he was intended to receive; otherwise not:[7] or, in other words, the estoppel itself is resolved into a question of intention. Consequently, the view seems preferable, that no surrender should result even where the new lease is valid, if the surrender would violate an intention clearly to be implied from the common sense of the transaction.

RECENT CASES.

AGENCY — LIABILITY OF UNDISCLOSED PRINCIPAL — PROMISSORY NOTE GIVEN BY AGENT. — The plaintiff sold realty to A and received in payment negotiable notes, signed "A, Trustee." A, unknown to the plaintiff, was acting as an agent of the defendants. The plaintiff sued upon the original contract for the purchase price. *Held*, that the plaintiff can recover. *Coaling Coal & Coke Co.* v. *Howard*, 61 S. E. 987 (Ga.).

The majority of American courts hold that recovery cannot be had on a promissory note against one whose name does not appear thereon, even if his agent signs the note and attaches words to his signature denoting his agency. *Manufacturers & Traders Bank* v. *Love*, 13 N. Y. App. Div. 561. Following the well-established rule as to the liability of an undisclosed principal, recovery is usually allowed if an action in general assumpsit is brought for the original consideration. *Harper* v. *National Bank*, 54 Oh. St. 425. The fact that the agent has given his note does not render the original contract non-existent so as to prevent a resort to it when the real parties are disclosed. The Georgia courts follow the usual presumption that the notes are not accepted as payment of the debt but merely as additional security. *Kirkland* v. *Dryfus & Rich*, 103 Ga. 127. Even where the opposite presumption prevails it is held to be overthrown in the case of an undisclosed principal, for the notes are accepted in ignorance of facts as to the real principal. *Lovell* v. *Williams*, 125 Mass. 439. The result reached in the present case, therefore, is entirely sound.

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN CONTRACT — WIFE'S AUTHORITY TO PLEDGE HUSBAND'S CREDIT. — The defendant allowed his wife money sufficient for household expenses, but did not expressly forbid her to pledge his credit. The plaintiff, knowing nothing of the allowance, sold meat to the wife on her husband's credit. *Held*, that the defendant is not liable. *Slater* v. *Parker*, 24 T. L. R. 621 (Eng., K. B. D., May 11, 1908)

If the husband makes adequate provision for his wife, there is no so-called agency by necessity. *Compton* v. *Bates*, 10 Ill. App. 82. But by giving the wife an allowance for the purchase of necessaries, he constitutes her his agent in fact for that purpose, though perhaps impliedly prohibiting the pledging of his credit. It would seem, then, that it should be left to the jury whether this express authorization carries with it an apparent authority or incidental power

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[5] Lyon *v.* Reed, *supra.*
[6] Lloyd *v.* Gregory, W. Jones, 405.
[7] *Cf.* Wms., Saunders, 5 ed., 236 c.

to pledge the husband's credit. *Bentley* v. *Doggett*, 51 Wis. 224. If such incidental power is found, the merchant, according to a well-settled principle of agency, should recover unless he knows that the wife is expressly authorized to buy only for cash. *North River Bank* v. *Aymer*, 3 Hill (N. Y.) 262. The court in the present case, however, following the later English cases, declares that as a matter of law any presumption of the wife's authority to pledge her husband's credit is rebutted by his giving her the allowance. *Morel Bros.* v. *Westmoreland*, [1903] 1 K. B. 64. This reasoning, however, seems to be a confusion of agency by necessity with agency in fact. See *Santer* v. *Scrutchfield*, 28 Mo. App. 150.

BANKRUPTCY — DISSOLUTION OF LIENS — WARRANT OF ATTACHMENT WITHIN FOUR MONTHS. — The plaintiff brought an action for breach of contract. A warrant of attachment was issued on the goods of the defendant, which then undertook to pay on demand any judgment which might be recovered against it in the action. On producing the bond of a proper surety the defendant obtained an order discharging the attachment in full and received its property back. Within four months of the date of issue of the warrant the defendant filed an involuntary petition in bankruptcy and was adjudged a bankrupt. The defendant applied for an order vacating the warrant of attachment. *Held*, that the warrant may not be vacated. *King* v. *The Block Amusement Company*, 126 N. Y. App. Div. 48.

No liability arises on an attachment bond until judgment is granted against the principal. Bankruptcy intervening, the principal should be allowed to stay proceedings, and later plead his discharge in bar, thereby relieving the surety. *In re Eastern Commission and Importing Company*, 129 Fed. 847. This is the rule in Massachusetts. *Johnson* v. *Collins*, 117 Mass. 343. An earlier New York case assumed that the attachment bond was a security substituted for the plaintiff's lien, and that the Bankruptcy Act of 1867 did not dissolve the attachment, so that the plaintiff was allowed to proceed to judgment on the warrant and, though perpetually enjoined from enforcing that judgment against the defendant, because of the adjudication, was allowed to hold the surety. *McCombs* v. *Allen*, 82 N. Y. 114. Without considering the correctness of that interpretation of the earlier statute, it is certain that an attachment occurring within the four months is dissolved by the clear intendment of § 67 of the Act of 1898, and the fiction of a substituted security only leads, as in the principal case, to an inequitable result; for while the bankruptcy has destroyed the lien against which the sureties bound themselves, yet they are still held liable.

BANKRUPTCY — JURISDICTION OF FEDERAL COURTS — PROPERTY HELD BY STATE COURT PRIOR TO BANKRUPTCY. — A sheriff had taken property from A under a writ of replevin issued by a state court. On the following day A filed a petition in bankruptcy in a federal court. The receiver petitioned that the sheriff be directed to deliver the property to him. *Held*, that the federal court has no jurisdiction. *Matter of Rudnick & Co.*, 20 Am. B. R. 33 (C. C. A., Second Circ.).

Section 67*f* of the Bankruptcy Act of 1898 invalidates all levies, judgments, attachments, and liens obtained against the bankrupt within four months of the adjudication. It has been held, in an unreasoned decision, however, that the term "all levies" is comprehensive enough to include a seizure under replevin process. *In re Haynes*, 123 Fed. 1001. See *In re Hymes, etc., Co.*, 130 Fed. 977, 979, and *In re Weinger, Bergman & Co.*, 126 Fed. 875, 877. But as the court points out in the principal case, a requisition in replevin deals primarily with the property of the plaintiff in that action, while § 67*f* of the Bankruptcy Act was clearly intended to deal with the property of the bankrupt, and not with that of third persons in his possession. Replevied property being without the scope of the section, it follows that the state court, when it obtains possession of the goods first, has the right to decide upon claims to their ownership. *In re Russell*, 101 Fed. 248. This view seems to be logically unassailable, and gives a satisfactory result, since the disputed title can best be determined in a plenary suit. *Cf.* 20 HARV. L. REV. 570.